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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,420	11/10/2003	Dana J. Medlin	ZM0582	5171
37235 7590 06/16/2004 ZIMMER TECHNOLOGY, INC. 150 N. WACKER DRIVE SUITE 1200 CHICAGO, IL 60606			EXAMINER ISABELLA, DAVID J	
			ART UNIT 3738	PAPER NUMBER

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/705,420	Applicant(s) MEDLIN, DANA J.	
	Examiner DAVID J ISABELLA	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al in view of Sioshansi et al (5123924) Noiles (3848272) and Lower (4573458).

Williams et al discloses a medical implant consisting essentially of a material selected from the group consisting of cobalt chrome alloy and austenitic stainless steel alloy, such that the implant comprises a core and surface layer, wherein the surface layer is hardened by the process of activating the surface by applying a layer of iron thereto, and thereafter carburizing the surface at a temperature and for a time insufficient for carbides to form on the surface layer. (Note Williams et al provides for hardening bearing structures.) While Williams et al is not specific to the particulars of the medical implants, each of Sioshansi, et al, Noiles and Lower teaches the use of cobalt chromium and/or stainless steel 316 in the manufacture of medical implants including orthopedic implant component selected from the group of an acetabular cup, a femoral head, a femoral stem, a glenoid cup, a humeral head, a humeral stem, a distal femoral condylar implant, a proximal tibial implant, and a fixation plate. Moreover, Shioshansi, et al teaches the benefits for hardening the bearing surfaces of the implant to reduce wear and improve tribologic function of the implant. If not inherent in Williams

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et al, examiner contends that it would have been obvious to one with ordinary skill in the art to fabricate the medical implants of Williams et al in the form of an orthopedic device including an acetabular cup, a femoral head, a femoral stem, a glenoid cup, a humeral head, a humeral stem, a distal femoral condylar implant, a proximal tibial implant, and a fixation plate.

Claim 1 is directed to an implant formed from a material of either cobalt chrome or austenitic stainless steel. Implant formed of these materials are clearly disclosed by Williams et al, Sioshansi et al, Noiles and Lower.

Claim 2 is directed to an implant formed from a material of stainless steel. Implant formed of these materials are clearly disclosed by Williams et al, Sioshansi et al, Noiles and Lower.

Claim 3 is directed to a joint implant formed from a material of cobalt. Implant formed of these materials are clearly disclosed by Williams et al, Sioshansi et al, Noiles and Lower. Joint components is taught by Sioshansi, et al and Noiles.

Claim 4 is directed to a joint implant wherein the cooperating bearing surfaces are formed from a material of cobalt. Implant formed of these materials are clearly disclosed by Williams et al, Sioshansi et al, Noiles and Lower. The cooperating joint components formed of cobalt is taught by Noiles.

Claims 5-8, the particulars of the components are taught by Sioshansi, et al and Noiles.

Claims 9 and 10 are directed to an implant formed from a material of either cobalt chrome or austenitic stainless steel. Implant formed of these materials are clearly disclosed by Williams et al, Sioshansi et al, Noiles and Lower.

Claim 11 is directed to a joint implant formed from a material of cobalt. Implant formed of these materials are clearly disclosed by Williams et al, Sioshansi et al, Noiles and Lower. Joint components is taught by Sioshansi, et al and Noiles.

Claim 12 is directed to a joint implant wherein the cooperating bearing surfaces are formed from a material of cobalt. Implant formed of these materials are clearly disclosed by Williams et al, Sioshansi et al, Noiles and Lower. The cooperating joint components formed of cobalt is taught by Noiles.

Claims 13-16, the particulars of the components are taught by Sioshansi, et al and Noiles

Claims 17-20, the particulars of the component are taught by Lower.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J ISABELLA
Primary Examiner
Art Unit 3738

DJI
JUNE 12, 2004